

REMARKS

This paper is being filed in response to the Office Action mailed on March 24, 2010 (the “Office Action”).

STATUS OF THE CLAIMS

Claims 35-68 are pending in the Application. Claims 1-34 are canceled without prejudice or disclaimer. Claims 35, 36, 37, and 54 are in independent form. Claims 37, 38, 49, 53-55, 65, and 67 are amended herein. Claim 69 is new. The Applicants respectfully submit that no new matter has been added with these amendments and/or the addition of claim 69.

In the Office Action, claims 1-7, 10-11, 17-20, 23-24, and 27-68 stand rejected under 35 U.S.C. § 112 ¶ 1 as purportedly containing subject matter that was not described in the specification. Claims 1-7, 10-11, 20, 23-24, and 28-33 stand rejected under 35 U.S.C. § 103 as purportedly being unpatentable over U.S. Patent No. 6,628,809 to Rowe et al. (“Rowe”), in view of U.S. Patent No. 5,787,185, to Clayden (“Clayden”) and U.S. Patent No. 4,614,861 to Pavlov et al. (“Pavlov”). Claim 27 stands rejected under 35 U.S.C. § 103 as purportedly being unpatentable over Rowe, Clayden, and in further view of U.S. Patent No. 5,974,337 to Kaffka et al. (“Kaffka”). Claims 17-18 stand rejected under 35 U.S.C. § 103 as purportedly being unpatentable over Rowe, Clayden, Pavlov, and U.S. Patent No. 4,582,985 to Lofberg (“Lofberg”). Claim 19 stands rejected as purportedly being unpatentable over U.S. Patent No. 4,582,985 to Schmitt et al. (“Schmitt”), in view of Rowe, and Clayden.

The Applicants appreciate the Examiner’s thorough examination of the Application and respectfully request reconsideration of the claims in view of these amendments and remarks. With this response, the Applicants have addressed all of the issues raised in the Office Action; therefore, the Applicants submit that the Application is in condition for allowance and respectfully request the same.

EXAMINER INTERVIEW

The Applicants thank Examiner Nguyen for the interview held on June 22, 2010. In the interview, the Applicants discussed potential amendments to claims 36 and 37 to

place these claims in condition for allowance. The Examiner suggested additional amendments to claim 65 which have been incorporated into this response.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112 ¶ 1, ADDITION OF CLAIM 69

Claims 1-7, 10-11, 17-20, 23-24, and 27-68 stand rejected under 35 U.S.C. § 112 ¶ 1 as purportedly “containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Office Action pg. 3. The Applicants have amended claims 37, 38, 54, and 55, rendering these rejections moot.

The Office Action purports that the specification fails to provide support for the limitation that, “said physiological process corresponds to one selected from the group consisting of cardiac rhythm, a diacrotic notch reading, a heartbeat waveform and a hemodynamic waveform” as recited in claims 27 (canceled) and 65. The Applicants have amended claim 65 and respectfully submit that the features recited therein are supported by the disclosure; paragraph [0030] of the disclosure reads:

“The biometric sensor is configured to determine specific unique internal biometric markers of a user. In a preferred embodiment of the invention, the sensor includes an emitter and a receiver. The emitter emits light or another form of energy which is partially absorbed and partially reflected by a portion of flesh of a user...Some of the internal biometric markers which may be measured or determined from the biometric sensor include, but are not limited to, bone density, electro-magnetic waves, cardiac rhythms, diacrotic notch readings, blood oxygen levels, capillary density, glucose levels, hematocrit levels, or sub-dermal layer analysis. Other biometric markers, such as bio-electric signals, resistance, impedance, capacitance, or other detectable electrical signals emanating from the body may also be detected by the sensor and used or combined with the feedback to the receiver to create a biometric profile of the user.” Application [0030]; emphasis added.

Claim 69 recites features similar to those in claim 65 and, as such, the Applicants respectfully submit that the specification enables claim 69 in at least paragraph [0030].

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The claims rejected under 35 U.S.C. § 103 are canceled, rendering these rejections moot.

GENERAL CONSIDERATIONS

By the remarks provided herein, Applicants have addressed all outstanding issues presented in the Office Action. Applicants note that the remarks presented herein have been made merely to clarify the claimed invention from elements purported by the Office Action to be taught by the cited references. Such remarks should not be construed as acquiescence, on the part of Applicants, as to the purported teachings or prior art status of the cited references, nor as to the characterization of the cited references advanced in the Office Action. Accordingly, Applicants reserve the right to challenge the purported teachings and prior art status of the cited references at an appropriate time.

CONCLUSION

For the reasons discussed above, Applicants submit that the claims are in proper condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner notes any further matters that may be resolved by a telephone interview, the Examiner is encouraged to contact Joseph Hawkins by telephone at (801) 578-6971.

DATED this 24 day of June, 2010.

Respectfully submitted,

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